Filed 7/3/19 In re A.A. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.A., a Person Coming Under the Juvenile Court Law.	H045202 (Monterey County Super. Ct. No. 15JV000308)
THE PEOPLE, Plaintiff and Respondent, v. A.A., Defendant and Appellant.	

A.A. suffers from schizophrenia. When he was 15 years old, he stole a bag of chips from a street vendor after striking and kicking him. The Monterey County District Attorney's Office filed a petition against A.A. alleging one count of second degree robbery. Doubting A.A.'s competence to stand trial, the juvenile court suspended proceedings under Welfare and Institutions Code section 709. After lengthy restoration proceedings, A.A. was restored to competence and admitted the allegation in the petition. Based on A.A.'s history of violent behavior and unwillingness to cooperate with mental health treatment, the juvenile court committed A.A. to the Division of Juvenile Justice for a maximum period of confinement of five years.

On appeal, A.A.'s appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that raises no issue. Concluding there is no arguable issue on appeal, we affirm the dispositional order.

I. FACTS AND PROCEDURAL BACKGROUND

On December 26, 2015, 15-year-old A.A. approached an ice cream street vendor, punched him, and kicked him three or four times while the vendor was on the ground. A.A. took a bag of chips from the vendor's cart. The vendor suffered an injury to his lip. A.A. stated that he punched the vendor because of a voice in his head.

The Monterey County District Attorney filed a juvenile wardship petition on December 29, 2015, pursuant to Welfare and Institutions Code section 602, subdivision (a) alleging that A.A. had committed second degree robbery (Pen. Code, § 211). On December 30, 2015, A.A. denied the allegation in the petition and was ordered detained in juvenile hall by the juvenile court. Because a doubt had arisen about A.A.'s competence, the juvenile court ordered proceedings suspended under Welfare and Institutions Code section 709 and ordered a mental health evaluation pursuant to Penal Code section 4011.6.

A court-ordered clinical psychologist submitted an evaluation that was filed with the juvenile court on January 11, 2016. The psychologist's report stated that A.A. had been diagnosed three years earlier with schizophrenia, and A.A. had a family history of bipolar disorder and schizophrenia. The report opined that A.A. "does not recognize that his behavior has been erratic and influenced by psychosis. It is not clear to what extent he accepts that he has an illness, although it is clear that he does not recognize his symptoms." The evaluator did not see evidence of ADHD or bipolar disorder but noted "that [A.A.]'s current clinical presentation is 'classically' Schizophrenic," and concluded "[b]ased upon the minor's active symptoms of psychosis, it does **not** appear as though he is currently competent to proceed."

On January 15, 2016, the juvenile court found A.A. to be incompetent pursuant to Welfare and Institutions Code section 709. In juvenile hall, A.A. resisted taking prescribed medication. On March 16, 2016, the juvenile court authorized A.A.'s transportation to "an appropriate locked psychiatric facility" and the administration of psychotropic medication. The Children's Behavioral Health unit of the Monterey County Department of Health (Children's Behavioral Health) unsuccessfully tried to find a placement for A.A. A.A.'s parents sought to have A.A. released to their custody with a safety plan in place, but the trial court denied the request on April 29, 2016.

On May 23, 2016, A.A. was placed in Star View Adolescent Center (Star View), a residential, therapeutic "locked facility" in Los Angeles because A.A. had experienced significant mental health decompensation while at Monterey County Juvenile Hall. At Star View, A.A. refused to take his medication. A.A. showed continuing signs of mental illness, was physically violent toward members of Star View's staff, and engaged in sexually inappropriate behavior. The Star View staff expressed concerns about A.A.'s family's understanding of his illness and treatment needs. On June 23, 2016, Star View terminated A.A.'s participation due to his refusal to take his medication and because he had shoved and kicked another participant in the program.

Children's Behavioral Health attempted to locate an alternative placement for A.A. by making inquiries at 25 psychiatric hospitals and seven in-state residential treatment programs. All were either unable or unwilling to accept him. A.A. was transferred back to the Monterey County Juvenile Hall.

In July 2016, A.A.'s attorney brought a motion to dismiss the petition against him, arguing that there was no evidence that A.A. would be "remediated to competency in the foreseeable future; no progress has been made on that front whatsoever due to the level of impairment [A.A.] suffers and keeping [A.A.] in custody for competency remediation under those circumstances is tantamount to an indefinite sentence without any adjudication as to the underlying crime." A.A.'s counsel also filed a motion to join the

Monterey County Public Guardian (Public Guardian) to A.A.'s case because the Public Guardian had refused to file for a LPS conservatorship (Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.)) for A.A., even though A.A. met the criteria for being gravely disabled, because the Public Guardian had a policy of not conserving minors.

On August 23, 2016, the juvenile court heard A.A.'s motions. Although the record on appeal does not contain a transcript of the August 23 hearing, the minute order states that A.A. had been accepted at a placement facility in Utah, and the probation department was to arrange for A.A.'s medication and transportation to the facility. In addition, Children's Behavioral Health would evaluate A.A. for referral for a LPS conservatorship.

On September 1, 2016, the juvenile court found the Utah facility was unable to address A.A.'s psychiatric and medical needs. The juvenile court scheduled a hearing on a LPS conservatorship. A minute order from a hearing held on September 8, 2016, by the juvenile court indicates that "[m]edication LPS has been granted."[1] The juvenile court continued the case for a "90 Day LPS Review Hearing" and ordered that A.A. remain detained in juvenile hall. Minute orders from subsequent court appearances reflect that Children's Behavioral Health continued to search unsuccessfully for an appropriate residential treatment facility for A.A.

A November 23, 2016 report submitted to the juvenile court by Children's Behavioral Health indicated that "there has not been any forward movement in the placement search"; possible treating facilities had expressed concerns about A.A.'s "sexualized behavior, recent aggression, and overall clinical management needs." On November 28, 2016, the juvenile court ordered that another competency evaluation of A.A. be conducted.

[1] A later competency evaluation stated that "a partial conservatorship was granted so that the minor could be involuntarily medicated while in custody."

On December 7, 2016, Dr. Carolyn Murphy, the same psychologist who had previously evaluated A.A. in January 2016, submitted a report to the juvenile court. Dr. Murphy's report stated that A.A. had refused to meet with her. Nevertheless, based on her review of reports about A.A. and her observation of him interacting with others, Dr. Murphy was able to form the conclusion that A.A. was competent to proceed. Although Dr. Murphy's report noted that A.A. was "currently unwilling to engage rationally with counsel in preparing or presenting his defense," she opined that he was competent because "there is no documented presence of ongoing symptoms of psychosis."

Dr. Murphy's December 2016 report also indicated that A.A.'s parents were "no longer consenting to placement," and there had been "some issue" with the family consenting to treatment. In a report to the juvenile court dated December 16, 2016, Children's Behavioral Health also stated that A.A.'s parents "refused to consent to placement being offered by the [Individualized Education Plan] team."

A.A.'s defense counsel sought a second opinion about A.A.'s competency. On December 30, 2016, Dr. Gregory Katz conducted an evaluation of A.A. Dr. Katz's evaluation indicated that A.A.'s counsel told Dr. Katz that A.A. was "irrational" and refused to speak with counsel, despite being told by his parents numerous times that he needed to cooperate with counsel to be released from juvenile hall. Dr. Katz's report detailed a number of "incident reports" from juvenile hall that reported A.A. acting with physical aggression toward staff, family members, and his peers. The reports also detail "bizarre," aggressive, and sexually inappropriate behavior. A.A. refused to speak with Dr. Katz when Dr. Katz attempted to interview him. Dr. Katz opined that A.A. "could not be restored to competency within a reasonable time frame. His mental stability is unlikely to be restored within the next 12 months to a sufficient degree to achieve an adequate level of trial competency." Dr. Katz's report concluded, "Of course, he would

be most appropriately treated in a highly structured, secure inpatient mental health setting and would likely need to be under a conservatorship status."

In a January 12, 2017 letter to the juvenile court, Children's Behavioral Health informed the juvenile court that on January 10 they were "informed of a document written by [A.A.] that appeared to outline potential plans and threat[s] to harm others at Monterey High School."

The Monterey County District Attorney's office filed additional delinquency petitions against A.A., alleging commission of the following crimes while he was detained at juvenile hall: on February 2, 2017, a misdemeanor battery on a school employee in violation of Penal Code section 243.6; on May 10, 2017, a misdemeanor battery on a peace officer, in violation of Penal Code section 243, subdivision (b); on May 11, 2017, a misdemeanor battery on a school employee in violation of Penal Code section 243.6; and on August 8, 2017, misdemeanor battery on a peace officer with injury, in violation of Penal Code section 243, subdivision (c)(2).

On February 27 and 28, 2017, the juvenile court held a contested competency hearing for A.A. Dr. Katz and Dr. Murphy testified. Dr. Katz opined that A.A. was not competent to stand trial. Dr. Murphy testified that at the time she observed A.A. in preparation for her December 2016 report, A.A. was competent to stand trial. Dr. Murphy stated "I don't wish to convey that this young man is not ill. I do believe he's ill. I believe he improved enough to make a choice not to cooperate with me."

On March 3, 2017, the juvenile court found A.A. to be incompetent pursuant to Welfare and Institutions Code section 709. The juvenile court stated "I am persuaded by Dr. Murphy's analysis, I think it's inherently more logical and complete than the information presented by Dr. Katz. However, I do not believe that substantial evidence was present to show, sufficient for me, to make a ruling that he is now competent. So the [c]ourt's ruling is that he continues to be incompetent; proceedings will continue to

remain suspended; and all prior orders regarding his restoration to competency will remain in effect."

On March 3, 2017, the juvenile court ordered Children's Behavioral Health to conduct a "mini Mental Status Exam" of A.A. In his subsequent report of April 26, 2017, the assigned social worker found A.A. presented a low danger to himself, a high danger to others, and a high degree of psychiatric risk. A May 2017 report prepared by a social worker with Children's Behavioral Health concludes that, because A.A. refused to meet with social workers and "participate in his remediation process," A.A.'s competency status "is unlikely to change."

A.A.'s counsel brought a second motion to dismiss the petition. At the May 17, 2017 hearing on the motion to dismiss, A.A.'s counsel stated that A.A. had only spoken with her once during the 16 months since the petition had been filed. A.A.'s counsel argued that A.A.'s conduct was "incredibly irrational" because A.A. "could have been home, most likely, if he was able to participate," and remediation was not "likely in the foreseeable future." Opposing the motion, the prosecutor argued that the reports showed that A.A. had not been restored to competency because he was "volitionally shipwrecking remediation."

The juvenile court observed that many of the people who interacted with A.A. "indicate consistently and repeatedly that he has a history of interacting appropriately with people he chooses to." The court found that a "reasonable timeframe" for remediation had not elapsed because A.A. "hasn't allowed that to occur." The juvenile court denied A.A.'s motion to dismiss the petition and requested that Dr. Murphy conduct a further evaluation of A.A.

On June 1, 2017, Dr. Murphy submitted another competency report to the juvenile court. Although A.A. again refused to speak with Dr. Murphy, she was able to observe A.A. and opined that A.A. is in "full or partial remission by now," and "there is no indication at the present time that he is not fully stabilized and therefore capable to

proceed." Dr. Murphy stated that, while a true understanding of A.A.'s understanding of the court process was impossible to determine since he would not speak with her or other treatment providers, "it can be said with a good degree of confidence that he is simply unwilling to participate or demonstrate such knowledge, not that he is unable to do so." Dr. Murphy concluded "Based upon a marked absence of active symptoms of psychosis or mood disturbance that could otherwise account for his behavior, it **does** appear as though he is currently competent to proceed."

On June 28, 2017, Children's Behavioral Health submitted a report to the juvenile court that indicated that they had attempted to place A.A. in 67 "potential placements across the United States," and he had not been accepted at any of them.

On July 27, 2017, the juvenile court conducted a second competency hearing for A.A. Dr. Murphy testified that she believed A.A. was competent to stand trial. Dr. Murphy testified that in A.A.'s case she found both mental illness and "malingering," that is, "the willful and deliberate feigning of psychiatric symptoms for some secondary gain."

Julie Kenyon, the probation services manager at juvenile hall, also testified. She had observed A.A. five days a week for the 549 days A.A. had been in juvenile hall. She testified about A.A. "[w]hen he first came in, he was very delusional, very violent, very unpredictable. He has, through the course of his stay with us, become medically managed on his psychotropic medications. His improvement in behavior is almost an 180, if you will. He's done very well. He's medicine-compliant. He engages with staff now on a regular basis, has meaningful conversations, can be funny, silly, tell jokes. It's in the beginning we couldn't even really communicate with him because he was so obviously engaging with other things going on in his own mind." Kenyon observed that A.A. "can go from engaging with staff to seeing mental health people coming, and then immediately becoming non-responsive and demanding to go back to his room, where

he's getting up and walking back to his room." "Any time they come into the facility, it's pretty common, regular behavior from him."

Based on the testimony and the evidence presented, the prosecutor argued that the juvenile court should find A.A. competent. Defense counsel concurred, stating "I have no evidence to present that contradicts that. In fact, [A.A.] did speak with me this afternoon and appeared to understand me and answer my questions and has an opinion about things. [¶] So at this point, I would submit it on what's been presented to the [c]ourt."

The juvenile court found "by preponderance that [A.A.] is competent, that he does understand the nature of the proceedings, that he is able to communicate successfully and rationally with his attorney and proceed forward with the case as it's described in the elements under [Welfare and Institutions Code section] 709." The juvenile court reinstated criminal proceedings against A.A.

On September 26, 2017, A.A. appeared before the juvenile court. The juvenile court described the terms of a proposed resolution in which A.A. would admit the robbery charge from December 29, 2015, and the other petitions would be dismissed. A.A.'s "maximum exposure would be five years and he would be eligible for [Department of Juvenile Justice (DJJ)] commitment because it's a 707(b) offense." A.A.'s defense counsel confirmed that A.A. would be eligible for a DJJ commitment. A.A. told the court that he understood that he could be confined for up to five years. After further colloquy with the juvenile court, A.A. admitted the allegation in count 1, "penal code 2[1]1 as a felony, second degree robbery, because [he] took personal property from . . . somebody and [he] did not pay for it and [he] used force or violence to do that." The juvenile court accepted A.A.'s admission and found it knowingly and voluntarily made. The juvenile court dismissed the remaining petitions against A.A.

The probation department submitted a probation report for A.A.'s dispositional hearing. The report noted that, according to Chyrl Williams of Children's Behavioral

Health, A.A. has been diagnosed with paranoid schizophrenia. Ms. Williams described A.A.'s parents as "uncooperative" because "[t]hey do not believe [A.A.] has a mental health issue." With respect to A.A.'s placement, the report stated "[b]ased on [A.A.]'s significant mental health needs, the nature and gravity of the offense and continued violent behavior in Juvenile Hall, and for the safety of the minor and the community, it is recommended that the minor be committed to DJJ. All less restrictive measures . . . were considered, but found inappropriate. It was noted that the minor's school attempted to place the minor in 96 different placements during this Court process. None were viable options. . . . The committee also indicated the minor is unable to receive any out-patient treatment services based on the severity of his needs, his behavior and lack of participation, and because his parents do not cooperate or participate." The probation report concluded, that DJJ "is the only place that can ensure the safety of the minor and the community, while at the same time providing extensive mental health services. [¶] DJJ provides structured treatment. DJJ also has two mental health residential treatment facilities, and DJJ has access to three state hospitals for acute mental health treatment. Any less restrictive option is not appropriate."

A juvenile hall behavior report written on October 9, 2017, stated that A.A. "is currently on Special Program due to repeated acts of violence towards staff and minors."

A.A. appeared before the juvenile court on October 17, 2017, for a dispositional hearing. A.A.'s counsel requested that the juvenile court release A.A. to his parents. A.A.'s parents were willing to engage in a "safety plan" and have A.A. home schooled. The People requested that the juvenile court follow the probation department's recommendation that A.A. be committed to DJJ.

The juvenile court made the following findings: "The Court declares the matter to be a felony and a 707(b) offense. The Division of Juvenile Justice has programs that will probably benefit the minor. Less restrictive alternatives are ineffective and inappropriate. [¶] The best interest and welfare of the minor requires the division of juvenile justice.

Protection of society requires a secure facility. [¶] Reasonable efforts were made to avoid removal from the home."

The juvenile court declared A.A. a ward of the court and committed him to the Division of Juvenile Facilities with a maximum period of confinement of five years and pretrial disposition credits of 631 days. The juvenile court also ordered that the "child and legal parent" pay a restitution fine of $100 and ordered no victim restitution.[2] Neither A.A. nor his parents objected to imposition of the $100 restitution fine. The juvenile court subsequently waived fees charged to A.A.'s parents for his confinement in juvenile hall.

A.A. timely appealed.

II. DISCUSSION

We appointed counsel to represent A.A. in this court. Appointed counsel filed an opening brief which stated the case and the facts but raised no specific issues. Counsel has declared that he notified A.A. both of his intention to request independent review under *People v. Wende*, *supra*, 25 Cal.3d 436 and of his right to file written argument on his own behalf. We notified A.A. of his right to submit written argument on his own behalf within 30 days. We have received no written argument from him.

[2] Neither the juvenile court, the minute order, nor the probation report indicated the statutory basis for the $100 restitution fine. We note that Welfare and Institutions Code section 730.6, subdivision (b)(1), provides "If a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows: [¶] (1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars ($100) and not more than one thousand dollars ($1,000). A separate hearing for the fine shall not be required."

We have independently reviewed the entire record. (See *Wende*, *supra*, 25 Cal.3d at p. 441; *In re Kevin S.* (2003) 113 Cal.App.4th 97, 119.) Based upon that review, we have concluded there is no arguable issue on appeal.

III. DISPOSITION

The dispositional order is affirmed.

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DANNER, J.

WE CONCUR:

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MIHARA, ACTING, P.J.

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GROVER, J.

People v. A.A.
H045202